

§ 575.303

5 CFR Ch. I (1–1–05 Edition)

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(4) A position as a law enforcement officer, as defined in § 550.103 of this chapter;

(5) A position under the Executive Schedule established under subchapter II of chapter 53 of title 5, United States Code, or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(6) An executive branch position filled by Presidential appointment (with or without the advice and consent of the Senate); or

(7) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3).

(b) The delegation of authority under paragraph (a) of this section shall not apply to the payment of a retention allowance to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

(d) When OPM finds that an agency is not paying retention allowances in conformance with the agency's retention allowance plan and the criteria established under § 575.305 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and with respect to any category or categories of employees and require that prior approval be secured at headquarters level before paying a retention allowance to such employees; or

(2) Revoke or suspend the authority granted to the the head of the agency by paragraph (a) of this section for all or any part of the agency and with respect to any category or categories of employees and require that prior OPM

approval be secured before paying a retention allowance to such employees.

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 59 FR 11701, Mar. 14, 1994; 60 FR 33327, June 28, 1995; 64 FR 69182, Dec. 10, 1999; 66 FR 37883, July 20, 2001]

§ 575.303 Definitions.

In this subpart: *Agency* has the meaning given that term in 5 U.S.C. 5102.

Employee means an employee in or under an agency.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

[56 FR 12838, Mar. 28, 1991, as amended at 57 FR 37399, Aug. 19, 1992; 60 FR 33327, June 28, 1995; 61 FR 3543, Feb. 1, 1996]

§ 575.304 Conditions for payment.

(a) An agency may not begin payment of a retention allowance during a period of employment established under any service agreement required for payment of a recruitment bonus under subpart A of this part or relocation bonus under subpart B of this part. After retention allowance payments have commenced, a relocation bonus may be paid without affecting the payment of a retention allowance.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

(c) An agency may not pay a retention allowance to an employee who is likely to leave his or her position for employment in the executive, legislative, or judicial branch of the Federal Government, whether in the same or a different agency.

(d) An agency may not offer a retention allowance to an individual (or authorize the payment of such an allowance) prior to the individual's employment with the agency.

[56 FR 12838, Mar. 28, 1991; 56 FR 40360, Aug. 14, 1991, as amended at 60 FR 33327, June 28, 1995; 60 FR 35601, July 10, 1995; 64 FR 71634, Dec. 22, 1999]

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

(a) Agency retention allowance plans.

(1) Before paying a retention allowance under this subpart, the head of an agency shall establish a retention allowance plan.

(2) A retention allowance plan shall include the following elements:

(i) The designation of officials with authority to review and approve payment of retention allowances;

(ii) Criteria that must be met or considered in authorizing allowances, including criteria for determining the size of an allowance;

(iii) Procedures for paying allowance; and

(iv) Documentation and record-keeping requirements sufficient to allow reconstruction of the action.

(b) Higher level review and approval. Each determination to pay a retention allowance, including the amount of such allowance, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) Criteria for payment. (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service.

(2) The determination required by paragraph (c)(1) of this section shall be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a

function that is deemed essential to the agency's mission.

(3) In determining whether a retention allowance should be paid and in determining the amount of any such payment, an agency shall consider the following factors, as applicable in the case at hand:

(i) The success of recent efforts to recruit candidates and retain employees with qualifications similar to those possessed by the employee for positions similar to the position held by the employee; and

(ii) The availability in the labor market of candidates for employment who, with minimal training or disruption of service to the public, could perform the full range of duties and responsibilities assigned to the position held by the employee.

(d) Approval of retention allowances for groups or categories of employees. (1)(i) An agency may authorize a retention allowance of up to 10 percent of an employee's rate of basic pay for a group or category of employees (excluding individuals covered by § 575.302(a) (2), (3), (5), or (6) or those in similar positions with respect to which the authority to approve retention allowances has been delegated to agency heads by OPM under § 575.302(c)) based on a written determination that the category of employees has unusually high or unique qualifications, or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category, and that it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category are likely to leave Federal service in the absence of the allowance.

(ii) The determination that there is a high risk that a significant number of employees in the targeted category are likely to leave may be based on evidence of extreme labor market conditions, high demand in the private sector for the knowledge and skills possessed by the employees, significant disparities between Federal and private sector salaries, or other similar conditions.

(iii) The targeted category should be narrowly defined using factors that relate to the conditions described in